

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ATANACIO BARRIENTOS,

Plaintiff,

v.

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY,

Defendant.

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C.A. No. 4:16-cv-3635

NOTICE OF REMOVAL

Defendant The Lincoln National Life Insurance Company (“Lincoln National”) files this notice of removal and states:

1. The Lawsuit. This action was filed on May 31, 2016 in the 55th Judicial District Court of Harris County, Texas, being numbered 2016-35858 on the docket of said court and being a suit by Plaintiff Atanacio Barrientos (“Barrientos”) for damages and extra-contractual damages arising out of the lapse of a life insurance policy (the “Policy”) with a face amount of \$100,000 that Lincoln National’s predecessor in interest issued to him.

2. Diversity Jurisdiction. Complete diversity of citizenship exists between Barrientos and Lincoln National, as they are citizens of different states. Barrientos was a citizen of Texas, both at the time this action was filed and as of the date of this removal. Lincoln National is an Indiana corporation with its principal office and place of business in Radnor, Pennsylvania, both at the time this action was filed and as of the date of this removal. Lincoln National thus was and is a citizen of Indiana and Pennsylvania and is not a citizen of Texas.

The amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. In Plaintiff’s First Amended Original Petition (the “Amended Complaint”), Barrientos

complains of the lapse of a \$100,000 policy, asserts claims against Lincoln National for breach of contract, common-law fraud, negligence, misrepresentations, bad faith, and violations of the Texas Deceptive Trade Practices Act, and seeks to recover economic and actual damages, exemplary damages, damages for mental anguish, and attorney's fees, both through trial and on appeal.¹

All told, the Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, and this action may be removed by Lincoln National pursuant to 28 U.S.C. § 1441(b). Venue is proper in this Court under 28 U.S.C. § 1441(a), as this action was pending in a state court within this district and division.

3. State Court Documents Attached. Lincoln National received the Citation and a copy of the Amended Complaint on November 17, 2016, which is the first time Lincoln National received, through service or otherwise, a copy of the initial pleading setting forth the claim for relief upon which this action is based. As such, this removal is timely under 28 U.S.C. § 1446(b). Attached hereto as Exhibit A are true and correct copies of the only process, pleadings, or orders received or filed by Lincoln National in this action, and this exhibit includes all of the documents that were in the state court's file as of the filing of this removal. Attached hereto as Exhibit B is a true and correct copy of the state court docket sheet.

4. Index of Matters Being Filed. Attached hereto as Exhibit C is a true and correct copy of the Index of Matters Being Filed.

5. List of Parties and Counsel. Attached hereto as Exhibit D is a true and correct copy of the List of Parties and Counsel.

¹ Amended Complaint, ¶¶ 22-62. As numerous courts have recognized, the measure of fees for amount-in-controversy purposes includes not only the fees that have been incurred to date, but also those fees that can be reasonably anticipated at the time of removal. *See Miera v. Dairyland Ins. Co.*, 143 F.3d 1337, 1340 (10th Cir. 1998); *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal. 2002); *Simmons v. PCR Technology*, 209 F. Supp. 2d 1029, 1035 (N.D. Cal. 2002).

6. **Civil Cover Sheet.** Attached hereto as Exhibit E is a true and correct copy of the Civil Cover Sheet.

7. **Relief Requested.** Lincoln National respectfully requests that the United States District Court for the Southern District of Texas, Houston Division, accept this notice of removal and that it assume jurisdiction of this action and issue all such further orders and processes as may be necessary to bring before it all parties necessary for the final trial hereof.

Respectfully submitted,

FIGARI + DAVENPORT, LLP

By: /s/ Andrew C. Whitaker
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ATTORNEYS FOR DEFENDANT
THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been sent by email and certified mail, return receipt requested, to Mr. Anis Damani, Damani Law Firm, PLLC, 8303 Southwest Freeway, Suite 111, Houston, Texas 77074, on this 12th day of December, 2016.

/s/ Andrew C. Whitaker
Andrew C. Whitaker